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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/764,995
Filing Date: January 26, 2004
Appellant(s): SMITH ET AL.

Mark A. Litman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 26th, 2008 appealing from the Office action mailed April 28th, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0063482	TOYODA	4-2004
2002/0147987	REYNOLDS et al	10-2002
6,731,416	HAZZARD	5-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **1** through **17** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claim 75 of copending Application No. 10/910713. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presented claim utilize a similarly described video apparatus for the incorporation of composite dealer images in a card game.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

This rejection though pending is considered held in abeyance until an indication of allowable subject matter is presented to the Appellant.

Claim Rejections - 35 USC § 103

Claims **1** through **16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoda (US 2004/0063482) in further view of Reynolds et al (US 2002/0147987).

Claims **1** through **10**: Toyoda teaches an automated wagering system including a first bank of common displays (*Toyoda* Elements 32, 42) containing a composite image including a dealer and background elements (*Toyoda* Figure 4, Element D1) visible to the game participants (*Toyoda* Figure 1) and a second bank of individual displays associated with each respective game participant for displaying virtual player cards and captured player portraits (*Toyoda* Paragraph 64, 133 & Elm 52). Toyoda further

Art Unit: 3714

teaches the inclusion of at least one processor (*Toyoda* Figures 2-3) enabling device operation.

In addition to the above *Toyoda* further teaches the incorporation of a picture in picture type display format where in player images are captured and displayed in the corner of each player display (*Toyoda* S46, S47, & Paragraphs 133,153-154) and the formation of a composite dealer image including multi-layer composite images including animation (*Toyoda* Fig 4 Paragraphs 113-114, 118-119). As the composite images of *Toyoda* conceal portions of the background images they are understood to include masking to form a merged image as shown in the above referenced figures of *Toyoda*.

As mentioned above, *Toyoda* teaches at least one processor connected to two distinct feeds of video information wherein the video feeds of video information provide multiple sources of live video information and is effected through the use of multiple video cameras (*Toyoda* Elm 44, Paragraph 70, Figures 2, 17) to utilize multiple video images in the formation of a composite image (*Toyoda* Figures 11, 12c, 13c) enacted through hardware and software elements (*Toyoda* Figure 3, Paragraphs 80-90).

Toyoda however is arguably silent regarding the explicit utilization of these video feeds and resultant images to form a composite image of a dealer against a background. In a related invention directed to the combination of multiple video feeds *Reynolds et al* teaches that composite images may be used in interactive games (*Reynolds* Para 7) to customize the combined display image to a specific demographic group, wherein such groups may further be determined by location (*Reynolds* Para 5-6, Fig 3). It would have been obvious to one of ordinary skill in the art at the time of invention to have

Art Unit: 3714

incorporated the teachings of Reynolds et al, into the composite video gaming system of Toyoda in order to provide a composite dealer image on a background reflective of the geographical location of the gaming device.

Both the systems of Toyoda and Reynolds et al are digital computing systems accordingly it is implicitly understood that the data manipulated is stored in the format of files, since both teachings would be inoperable if they were unable to distinguish various data portions from one another in the retrieval of information such as described in paragraph 152 of Toyoda.

Claims **11** through **16**: Toyoda teaches the utilization of a singular CPU in each table game arrangement such as shown in figures 1 and 2 wherein the singular processor performs the functions of a processor at each player position, a common dealer processor, and a main processor. All of which are in communication with one another as they are integral to one another. The appellant's present arrangement of processors is understood to be the separation of the singular processor as taught by the prior art of Toyoda into multiple discrete devices. MPEP 2144.04V sets forth that making a singular element separable or alternatively multiple separable parts integral is obvious (In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965), In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)). It would have been obvious to one of ordinary skill in the art at the time of invention to have distributed the singular CPU of Toyoda into multiple CPUs including a controller CPU, a Dealer CPU, and a respective CPU at each of the player stations in order to offer system redundancy and/or provide a system wherein multiple user terminals could be added without being

Art Unit: 3714

limited by the central CPUs processing ability. Alternatively the additional processors beyond the central processor may be additionally considered embodied in cell phone devices of Toyoda (Toyoda paragraph 71).

Claim **17** is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Toyoda (US 2004/0063482) and Reynolds et al (US 2002/0147987) as applied to claims **1** through **16** above and in further view of Hazzard (US 6,731,416)

Toyoda the incorporation of cards games including poker and the need to conceal one's hand from unwanted onlookers (*Toyoda* Paragraph 172) is silent regarding the incorporation of a changeable light filter that changes the display's transmission of images based on the angle of view. In the art of screen privacy protection, Hazzard teaches the use of a holographic display filter that changes the display's transmission of images based on the angle of view in order to ensure that unwanted onlookers are unable to view information presented on a display screen (*Hazzard* Abstract & Col 1:32-44). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the holographic privacy filter of Hazzard to assist a player in concealing their cards from unwanted onlookers as taught by Toyoda.

(10) Response to Argument

The Appellant argues various deficiencies in the presented rejections in keeping with the format and order of presentation these arguments are redressed below.

I. Double Patenting (as presented in the first two full paragraphs of page 10)

The appellant proposes the pending rejection is moot because of their petition to remove the previously submitted terminal disclaimer and their “cancellation” of claim 75 in the copending application.

On the first element the appellant’s petition remove their previously submitted terminal disclaimer was denied based on the following fact pattern.

- 1) The appellant’s petition describes the claims as “cancelled” when they are in fact only **withdrawn** (see pending claims of 10/910793).
- 2) The appellant maintains their *rights* to the withdrawn claims until such time as the appellant cancels those claims (FP 8.03).
- 3) The purpose of the terminal disclaimer is to limit the improper extension of the appellant 's *rights* for the same invention (MPEP 804).

As the improper extension of rights remains between the two applications, the terminal disclaimer is proper and the appellant's rational for its removal is not supported by the written record.

On the second element the appellant errors in characterizing the claim as cancelled when it has in fact been withdrawn. As illustrated in the preceding subsection however the claim has not been cancelled but instead the claim has been withdrawn. As the claim is not cancelled the appellant maintains rights to the withdrawn subject matter until such time as the claims directed to such are cancelled.

Accordingly the double patenting rejection is not moot and remains proper as set forth.

Special Remarks section A (as presented in the last three full paragraphs of page 10)

Though not a critical point of the rejection as the elements of the claimed invention are taught by the combination of the prior art as a whole, the appellant argues that the pending claims are absent intended use type language. In a proposed counter example the appellant presents the following as an example of intended use limitation:

1) An apparatus for providing merged images comprising at least one dynamic image comprising a processor and a video monitor on which merged images are displayed.
--

With respect to intended use type limitations MPEP 2111.04 and 2106.II.C entitled “Review the Claims” wherein the latter is presented the following.

Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) *statements of intended use or field of use,*
- (B) *“adapted to” or “adapted for” clauses,*
- (C) *“wherein” clauses, or*
- (D) *“whereby” clauses.*

This list of examples is not intended to be exhaustive.

Art Unit: 3714

With relation to the above and the Appellant's example the following exemplary presentation of pending claim 1 illustrates the optional steps recited in the pending claims

1. An automated wagering gaming event system comprising:

at least two distinct video displays, a first video display **for showing a dealer in a card game** and at least a second video display showing playing cards to individual players;

at least one processor **for enabling** play of the wagering gaming event;
multiple player positions **to enable** multiple players to play the game;

wherein the at least one processor is connected to at least two distinct feeds of video information so that the processor is fed the at least two different multiple video images and the at least one processor contains software that merges the at least two multiple video images to form a composite image of a dealer against a background,

at least two separate feeds of video image information connected to sources of different video content that are fed into the processor and are merged in the at least one processor and then displayed on the first video display;

wherein the background comprises at least one dynamic image. (Emphasis Added)

From the above claim the following is readily discernable:

a) The recitation of "**for showing a dealer in a card game**" is **not** considered intended use type claim language because the second to last clause of the same claim positively recites the presented limitation;

b) The recitation of "**for enabling** play of the wagering gaming event" **is** considered an intended use type limitation because the claim describes a intended operation of the claimed invention and not a structure or physical property of the claimed invention;

c) The recitation of "**to enable** multiple players to play the game;" **is** considered an intended use type limitation because the claim describes intended operation the claimed invention and not a structure or physical property of the claimed invention;

Art Unit: 3714

d) The recitation of “wherein the at least one processor is connected to...” is **not** considered intended use type claim language because the claim language sets forth a physical arrangement of components through defining a connection; and

e) The recitation of “that are fed into the processor and are merged in the at least one processor and then displayed on the first video display;” **is** considered an intended use type limitation because the claim describes intended operation the claimed invention and not a structure or physical property of the claimed invention;

Hence with review of the applicable standards for the holding of intended use type limitations, and review of the exemplary appellant's claim 1, it has been shown that the appellant's claims do indeed contain recitations of intended use contrary to their assertions otherwise.

Special Remarks section B (as presented in the last lines of page 10 through the first two paragraphs of page 12)

In this section the appellant argues their claimed invention in the light of a software patent and a holding derived therefrom that their claimed invention must be interpreted as a device enacting a specific software method. In support of this argument the appellant cites various court decisions but notably does not reference the standards set forth by MPEP with relation to the proper format for claiming software related inventions.

The appellant's arguments of this section are however ultimately disjointed from the claims on appeal. On one hand the appellant argues the claimed invention as a software type invention yet according to the standards of the office reflected by the

Art Unit: 3714

MPEP the appellant has made no effort to format the presented claims as a computer implemented method. The pending claims are apparatus type claims, and (save the exception of a computer readable medium type claim format) the MPEP does not provide a basis or standard to support the interpretation of any computer invention under a computer related medium exception unless the prescribed form is followed. In the instant case the Appellant's argument's are convenient to the removal any functional claim language in at least a computer based claim, but are contradictory to the type of claim one may present to the office under 35 USC 101, and MPEP 2106.01 since steps recited in a computer based claim are accorded weight reflect of the function they perform and not the function which they "maybe" used to perform. Accordingly the arguments must at least fail for improperly characterizing the presented apparatus type claims as appropriate form reflective of a computer related invention in contradiction to guidance of MPEP.

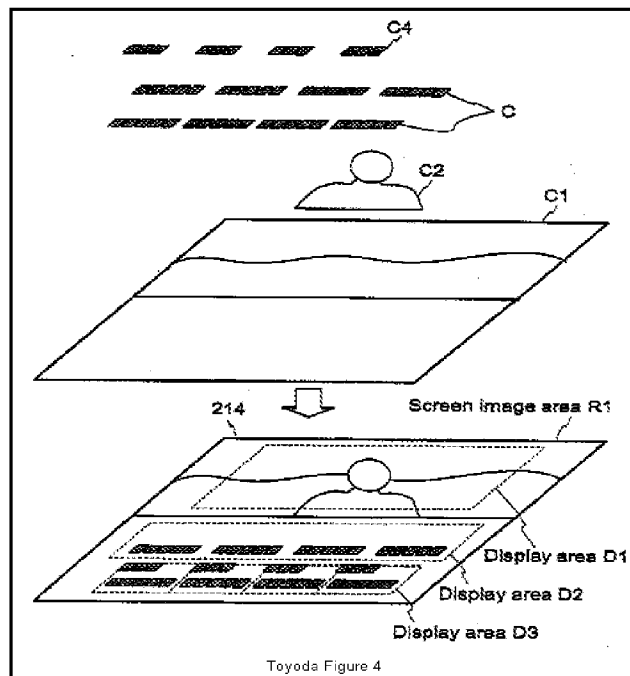
Special Remarks section C (as presented in the third full paragraph of page 12)

The appellant raises issue with the examiner interpretation that the claimed processing board absent any further disclosure within the claims, may be fairly and broadly interpreted to include a myriad of conventional components capable of processing and in the form of a board or equivalent thereof . The appellant's only issue raised with the above appears to be that they are free to broadly define their invention.

As this broadness has not been raised by the Examiner in the form of an objection or rejection, this point is effectively moot.

Remarks in the rejections and comments of the Examiner Pages 7-10 (as presented in the fourth full paragraph of page 12 through page 14 of the appellant's brief)

Beginning this section the appellant reasserts an argument presented during prosecution that the processor of prior art of Toyota would be insufficient to merge two video feeds. In support of their position the appellant relies on an excessively narrow interpretation of the term "merge" that is not fairly supported in the claimed invention and further proposes that the holding of the final rejection is an error based on misunderstanding of the prior art on part of the examiner. Respectfully and as discussed in greater detail below, the examiner's position is in keeping with the



teachings of the prior art, the breadth of the language, and the standards of examination.

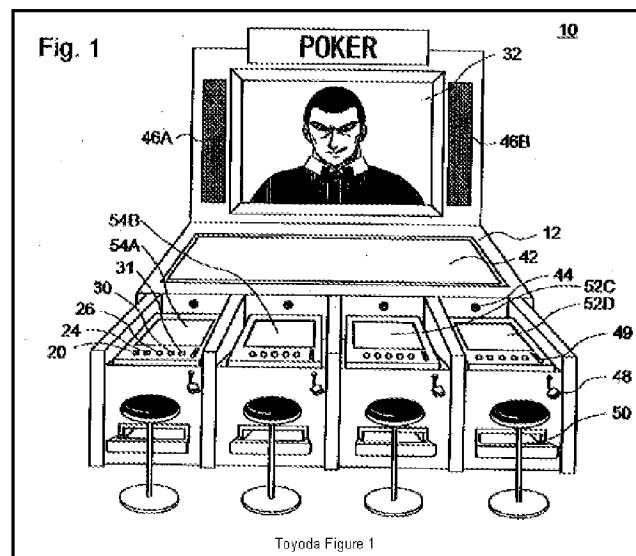
With relation to merging the appellant argues that an image is only merged when the components are overlaid with one another in combination to form a new image. While this interpretation of the term merged is

Art Unit: 3714

reflected in figure 4 (merged) and 5-9 (animation of the dealer) of Toyoda (wherein a static background and animated foreground are shown), such an interpretation improperly limits the meaning of the term "merge". Fairly this term only describes the joining of two elements and not manner in which they are joined. Accordingly figure 11 (reproduced on page 15 of this answer) and the description thereof paragraph 133 of Toyoda demonstrates the images of two players captured by cameras on the gaming device joined (and as such merged) on a player screen.

The appellant argues that the display of images in figures 4 and 13c are juxtaposed not merged in the second to last paragraph of page 12 of the appellant's brief. The appellant's arguments however are plainly in error.

Element 32 of figure 1 shows a virtual dealer display, composed of the merged images elements C1 and C2 combined in Figure 4 to yield display area D1, Toyoda further describes this arrangement C1 as the background image in paragraph 118 and the character image C2 in paragraph 119. The appellant

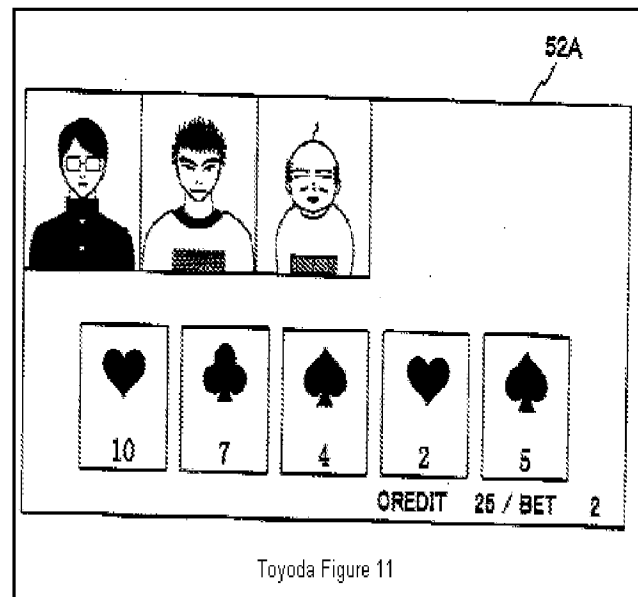


however argues that this combination is a false impression and that the images are shown on three separate display elements. While true that Toyota teaches three

Art Unit: 3714

separate display areas (such as reflected in figure 12), Toyoda clearly states that image C1 serves as a background image for each display and then in the instance of the top display (Element 32) displays thereon an image of a character or dealer. Hence regardless of the number of separate displays the appellant's proposition that a figure and teachings of Toyoda demonstrating the combination of images including the characterization of an image as a background image does not teach the "merging" of images is not accurately reflective of the prior art or reflective of the fair and ordinary meaning of the term "merge".

With relation to the argument that the images are merely juxtapose the appellant appears to be directly challenging the teaching of figure 11. Respectfully any image which is merged can contain elements that are juxtaposed one another, simply the characterization of image elements as being juxtaposed bears no impact on the determination whether or not an image is resultant of the merging of



Toyoda Figure 11

separate images. In this instance the image of players shown in figure 11, demonstrate an image composed of a plurality of separate player images presented juxtaposed to one another.

Simply the appellant's arguments on this point rely on an overly narrow interpretation of the term "merge" and are not reflective of the merging of elements demonstrated by Toyoda that redress the appellant's challenges of enablement through their disclosed operation.

In the paragraph bridging pages 12 and 13 of the appellant's brief the appellant challenges that the rejection of claims under USC 103 and based on Toyoda and Reynolds is improper because Toyoda in isolation does not teach all the features of the claimed invention. This rational is simply not reflective of the standards of USC 103 or the rejection based on a combination of references as presented.

Continuing in the same section the appellant argues that the prior art of Toyoda would be incapable of enabling the disclosed functionality (presumably after the modification as presented in the pending rejection). However as demonstrated on the preceding pages, Toyoda teaches the utilization of live video information (player pictures and the incorporation of multiple images to form combined images and thereby demonstrates the enablement of the Toyoda system to display the dynamic image in combination with an additional image while the prior art of Reynolds provides a motivation basis to provide such a modification.

Commencing on the first full paragraph of page 13 of the appellant's brief, the appellant argues that the images shown in figure 13 and elements 52A, 52B, 52C, and 52D, are individual player screens and do not prove that the prior art is functionally capable of or in the alternative not instructive to, the presentation of a live background with the dealer on element 32. Respectfully the appellant challenges the enablement of

Art Unit: 3714

the prior art of Toyoda to merge live images with game images. It has been demonstrated that Toyoda teaches the inclusion of live player images through their respective incorporated into game play demonstrated in at least figure 11 and further the ability to merge multiple images to form composite image demonstrated in both figures 4 and 11 (as incorporated above) includes game images incorporating a dealer and a background image associated therewith. Accordingly the functionality and instructiveness of Toyoda with regards to the displaying and merging both live images and static images has not been assumed as so alleged but instead taught by the prior art and relied upon accordingly.

In section B(ii) as presented in the second full paragraph of page 13 in the appellant's brief, the appellant challenges that the prior art of Toyoda does not teach the specific arrangement of displaying a live background with a dealer image. As previously mentioned the prior art of Toyoda teaches various display features including the presentation of a dealer against a background and the ability to display and merge live images. As the teachings of Toyoda are not relied on under USC 102 to demonstrate the teaching of replacing the static background of Toyoda with a live background this arguments does not address the USC 103 rejections of record,

In the third full paragraph the appellant proposes that even if such modification of Toyoda were possible in view of Reynolds the result would be to display the claim combination of elements on the player displays. Respectfully the appellant's argument on this matter are simply not directed to the rejection as presented. If the modification recited by the rejection under USC 103 was to modify the player display rather than the

Art Unit: 3714

dealer display the argument would be valid, however it is not and accordingly the argument is not reflective of the rejection of claims as presented.

In the paragraph bridging pages 13 and 14 of the appellant's brief the appellant argues non-claimed features of the invention as not being fairly presented in the prior art. As these features are not explicitly claimed and the appellant has not demonstrated that these features are inherent to the claimed subject matter these arguments must fail, at least on the grounds that the appellant's arguments cannot substitute for affidavit or claim amendment reflective of the argued and non-recited features.

Continuing at the beginning of page 14 and following through the first three paragraphs thereof the appellant again challenges the specific arrangement for not being fairly taught by the prior art of Toyoda. As this argument has been addressed on the preceding page, it will not be repeated herein for the sake of brevity.

Independent patentability of claims 3 and all claims dependent thereon (as argued on pages 14 through 19 of the appellant's brief)

Beginning on the first full paragraph on page 15 of the appellant's brief the appellant characterizes the rejection as assuming the functional capability of the prior art (specifically Toyoda) to perform the described functionality. As demonstrated above there has been no assumption of functionality of the prior art as so alleged. This argument has been previously rebutted on pages 16-17 of this examiner's answer and will not be repeated for the sake of brevity.

In the last paragraph of page 15 and the first full paragraph of page 16 the appellant suggests that the claimed invention now includes elements not specifically

Art Unit: 3714

taught by the prior art of Toyoda and that the rejection is in error for not addressing such features. Respectfully this argument is understood to be a general allegation of patentability rather than a constructed argument for patentability directed to the applied prior art combination of Toyoda and Reynolds.

The appellant's arguments of the second paragraph of page 16, continue to build off of a selective arrangement of the prior art not reflective of the rejection of record through suggesting that the modification was of a player screen rather than that of the common display (element 32). As the rejection is not based on the appellant's correlations challenges directed to such are moot for not addressing the rejection of record. The specific claim elements argued over the combination of Toyoda have been previously addressed above both in the rejection of claims and rebuttal of arguments present above on at least pages 17 of this examiner's answer and will not be repeated herein for the sake of brevity.

In the third full paragraph of page 16 the appellant attempts to argue commercial and technical advantages over the prior art combination. Respectfully the appellant's arguments may not take place of evidence according to MPEP 2145. As these arguments are reliant purely on attorney statement they are deficient for not reflecting the pending claim limitations, or evidence of record.

In the final paragraph of page 16 and through the first paragraph of page 17 of the appellant's brief, the appellant states that the prior art does not teach separate video feeds to the dealer image, separate video feeds of the dealer and a dynamic background to a processor, simultaneous feeding of video image data to a processor, a

Art Unit: 3714

live feed, and software enabling the operation of the device. These features are correlated to the actual claim language and features of Toyoda in the following table.

Table 1A: Rebuttal of listed features		
Appellant Argued Limitation	Claim Basis if Present	Prior Art Teachings of Cited Features
(providing) separate video feeds to the dealer image	The presented language is not reflective of claim language. The closest language of claim 9 is directed to providing background images, stored in files and connected through feeds into a processor for a dealer foreground image.	Toyoda describes images C1 (background) and C2 (dealer) as separate images combined in figure 4 while paragraphs 118-119 describes retrieving images from RAM and ROM and display one image in the foreground the other image in the background under direction of control circuit 60.
(providing) separate video feeds of the dealer and a dynamic background to a processor	Fairly presented in claim 8.	Paragraphs 118-119 teaches loading images of the background and fore ground separately while Figure 4 teaches the utilization of live player images in a game player display. Modified under the teachings of Reynolds to provide the live video images as a feed for the background images of the dealer on element 32 of Toyoda.
simultaneous feeding of video image data to a processor,	No support within the claim language for the simultaneous feeding of video information.	Toyoda teaches providing video image data through imaging devices 44a to 44D, later displayed as shown in figure 11.
a live feed	Fairly presented in pending claim 2	Toyoda teaches utilizing a plurality of image capturing devices to capture the expressions of player's playing the game and presents those images on player displays in paragraph 70. If the feed was not implicitly live then it would be incapable displaying images of player's playing the game and by extension thereof would also display images of past game participants.
software enabling the operation of the device	Fairly presented within pending claims 1 and 3.	Paragraph 4 of Toyoda describes software as a "program" were paragraphs 80-83 & 90 describes the storage of the programs on various media including CD-ROMS.

Continuing on the second paragraph of page 17, the appellant states that the examiner is found of citing numerous board decision on the issue of "...the absence of a disclosure in a prior art reference relating to a function did not defeat the Board's finding of anticipation..." . In clarification of the above, this citation is part of a much larger citation presented in the MPEP 2114 regarding the office interpretation of functional language. Suggestions that the position is not reflective of the MPEP 2114 (cited therewith) or were contrived on some other basis are inaccurate.

Continuing in the same paragraph the appellant argues that specific software is required and claimed to perform the task of merging and that the holding of the software element of Toyoda as implicitly present is in error. Toyoda teaches the claimed software as programs for enabling the disclosed operation of image display and game elements in at least paragraphs 80-90 of the Toyoda reference. Accordingly no implicit or inherency must be relied upon to demonstrate the presence of software since Toyoda teaches both the inclusion of programs and describes the functionality thereof.

In the third full paragraph on page 17 of the appellant's brief the appellant argues that neither Reynolds or Toyoda teaches the inclusion of a live images. As correlated in the rejection and table above, the player images of Toyoda are captured and displayed to users in order to convey the expressions of players to one another. Hence if the image feeds were not at least implicitly live then the system of Toyoda would be incapable of capturing and conveying player expressions simply because a failure to routinely update the displayed images would mean that the system couldn't ensure that it was displaying live images of game players. For instance if the image weren't at least

Art Unit: 3714

implicitly live then the images display can be reflective not of current game players but, also past participated in the game.

In the forth full paragraph on page 17 through the first three paragraphs of page 18 of the appellant's brief, the appellant argues feature for which Reynolds is not relied upon for teaching. Continuing therefrom the appellant argues that Reynolds teaches away from the claimed invention based on a teaching of physical image storage at a remote location in Reynolds. The appellant proposes that the remote storage contradicts the limitations of claims 7-10. Critically eroding this argument however, the claims to which the appellant refers do not describe nor detail where the images are stored. Accordingly the appellant's arguments are flawed in at least so much as the appellant's claims only describe the storage of images in files and not where those files are stored or physically located. Without the claims specifying where the image files are physically located the appellant has no basis to argue that the embodiments of Reynolds would in some manner teach away from the claimed invention. While not directly addressed it is further appreciated that the prior art of Toyoda teaches that the programs maybe stored pr physically located on separate storage mediums that wouldn't prohibit the use of remote storage device. From the above, no reasonably supported basis for a proposed teaching away has been presented between the prior art references and the appellant's claims do not support a deficiency in the rejection of prior art as applied.

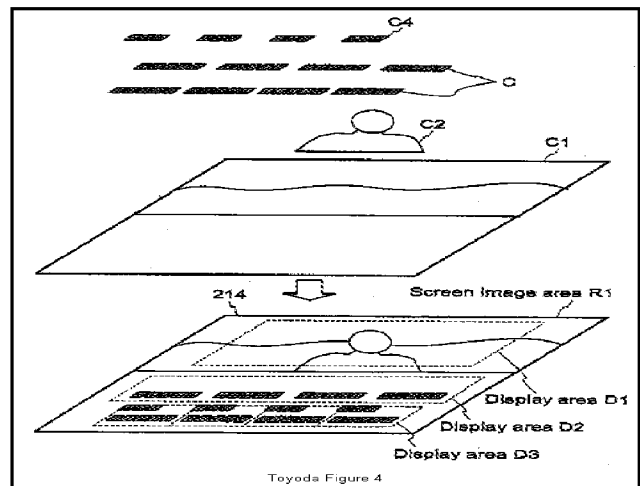
Continuing from the forth paragraph of page 18 of the appellant's brief the appellant argues the additional claim limitations of claim 3 including:

...the at least one processor has software therein that is executed and merges the at least three multiple video images to form a composite image of a dealer against a background... and

...the processor having a file source enabling feeding at least one set of video image data as a mask layer and at least one other set of video image data as an auxiliary dynamic background image for display of the merged image....,

as not being fairly taught by the rejection of record.

With respect to the first limitation it has been shown above that the prior art of Toyoda teaches merging a first dealer image and a second background image (the later notably modified under USC 103 to a dynamic background image) providing two of the three claimed images. The third image as defined by the claim is the masking layer image, understood to be an



implicit part of the combination of images in Toyoda. The masking image serves to operate in similar manner to masking a surface for painting and more precisely limits what portions of the combination image reveal the background and which portions of the combined image display the dealer. Masking is further disclosed as a known technique for the selective over lapping of images in the appellant's specification page 16 line 6 through line 19. As the combination of images shown by Toyoda demonstrate the selective presentation of the dealer over portions of the background this feature must at least be implicitly present because the alternative would yield an arrangement wherein

Art Unit: 3714

the background would conceal the image of the dealer, that is clearly not the case in the presented overlapping images of Toyoda.

Concluding this section in the last full paragraph of page 18 through the first three paragraphs of page 19, the appellant argues that the prior art does not teach a processing board associated with each player position as recited in dependent claims 12 through 14.

The rejection of record holds that the separation of a singular processor of Toyoda into multiple processors is an obvious separation of parts further supported by Toyoda discussion of utilizing portable phones (electronic equipment with the ability to process at the very least voice communication data) attached to player consoles in paragraph 71 of Toyoda. As the appellant's challenges on this section does not address the rejection of record and specifically the basis thereof, no rebuttal of these arguments is understood as necessary or proper at this point.

3. Claim 17 is under 35 USC 103 as unpatentable over Published U.S.

Application 2004/0063482 (Toyoda et al) in view of Reynolds et al (U.S. Published Application 20020147987), when further considered with U.S. Patent No. 6,731,416 (Hazzard).

The appellant's arguments of this section as presented in the final two paragraphs of page 19, propose non-obviousness based the argued non-obviousness of parent claims 1 and 11. As no specific arguments are presented with respect to the instant claims, the appellant's arguments are addressed with the redress of the appellant arguments directed to at least claims 1 and 11 as previously presented above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Robert Mosser/

Examiner, Art Unit 3714

Conferees:

/Dmitry Suhol/

Supervisory Patent Examiner, Art Unit 3714

/Peter DungBa Vo/

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Application/Control Number: 10/764,995
Art Unit: 3714

Page 26